

# **ADDENDUM**

## **FINAL STATEMENT OF REASONS**

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### **PERMIT IMPLEMENTATION (AB 1497) REGULATIONS**

#### **Regulation Text**

CIWMB staff modified text in the following sections to clarify without materially altering the requirements, rights, responsibilities, conditions, or prescriptions contained in the original text submitted to the Office of Administrative Law on January 31, 2007:

- **Section 21660(a)(2)**
- **Section 21660.1(b)**
- **Section 21660.3**

#### **Specific Purpose and Necessity of the Regulations**

The following is substitute language for the identified sections. This substitute language also applies to any responses to comments received on the identified sections.

##### **Section 21570(f)(9)**

This subsection is deleted to remove the specific requirement that the operator include as part of a complete and correct application package a copy of land use entitlements for the facility. This is necessary to avoid promoting/creating any conflict between the local jurisdiction's land use permit/entitlement and the solid waste facilities permit process. Under existing regulations, a complete permit application requires inclusion of the land use and/or conditional use permit (CUP) applicable to the facility. EAs are required to review the permit application to determine if it is correct. Other than using the information provided in the land use or CUP to better understand the project described in the application, it is not clear in existing regulation what the EA should be doing relative to reviewing the land use or CUP. Delays in the processing of some permit applications have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlements. State law has not mandated that the EA be an agency required to verify if the information in the land use approval is correct or if the facility has the approval of the local government to operate as proposed under a solid waste facilities permit. The appropriate agency for making local land use determinations is the local government having jurisdiction, in most cases, the city or county in which the facility is located.

To provide clarity, the proposed regulations remove the requirement that applicants submit land use entitlements to the EA in their applications, thus excluding local land use from EA decisions on acceptance of a complete and correct permit application package. In its place, the new regulations provide that the EA may consider land use entitlements when drafting permit terms and conditions, which is when the EA considers the content of other entitlements, permits, and approvals when processing a solid waste facilities permit (see Section 21650(i)). The Note in Section 21650(i) is amended to clarify that when writing permit conditions the EA may take into consideration other permits, entitlements and approvals, such as local use permit conditions, mitigation measures imposed under the California Environmental Quality Act, Air Pollution Control District/Air Quality Management District permits to construct and operate, Department of Fish and Game permits, Coastal Commission approvals, and others. Further, the Board emphasizes that when writing permit conditions the EA shall take into consideration PRC

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Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment. This approach acknowledges that the EA should be aware of and may take into consideration other permits and approvals when writing permit terms and conditions, but does not put the EA in the position of enforcing local land use permit conditions by not processing a solid waste facilities permit application. Nothing in the proposed regulations will prevent or hinder a local jurisdiction from carrying out its responsibility relative to enforcing local land use requirements. Operators are still bound to comply with local land use permit conditions, which are enforced by local agencies that are charged with that responsibility.

### **Section 21650(i)**

The Note in Section 21650(i) is amended to clarify that when writing permit conditions the EA should be aware of and may need to take into consideration other permits, entitlements and approvals, such as local use permit conditions, mitigation measures imposed under the California Environmental Quality Act, Air Pollution Control District/Air Quality Management District permits to construct and operate, Department of Fish and Game permits, Coastal Commission approvals, and others. This is necessary to clarify that it is when the EA is writing permit conditions that it should be aware of, and consider, the local jurisdiction's land use permit/entitlements. Under existing regulations, a complete permit application requires inclusion of the land use and/or conditional use permit (CUP) applicable to the facility. EAs are required to review the permit application to determine if it is correct. Delays in the processing of some permit applications have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlements. State law has not mandated that the EA be an agency required to verify if the information in the land use approval is correct or if the facility has the approval of the local government to operate as proposed under a solid waste facilities permit. The appropriate agency for making local land use determinations is the local government having jurisdiction, in most cases, the city or county in which the facility is located.

To provide clarity, the proposed regulations remove the requirement that applicants submit land use entitlements to the EA in their applications, thus excluding local land use from EA decisions on acceptance of a complete and correct permit application package. In its place, the new regulations provide that the EA may consider land use entitlements when drafting permit terms and conditions, which is when the EA considers the content of other entitlements, permits, and approvals when processing a solid waste facilities permit. Further clarification is provided that when writing permit conditions the EA shall take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment. This approach acknowledges that the EA should be aware of and may need to take into consideration other permits and approvals when writing permit terms and conditions, but does not put the EA in the position of enforcing local land use permit conditions by not processing a solid waste facilities permit application. Nothing in the proposed regulations will prevent or hinder a local jurisdiction from carrying out its responsibility relative to enforcing local land use requirements. Operators are still bound to comply with local land use permit conditions, which are enforced by local agencies that are charged with that responsibility.

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### **Section 21685(b)(6)**

This subsection is deleted to remove the specific requirement that the proposed solid waste facilities permit submitted to the CIWMB for concurrence include a copy of land use entitlements for the facility. This is necessary to conform with the deletion of Subsection 21570(f)(9), which required the operator to include as part of a complete and correct application package a copy of land use entitlements for the facility. The deletion of land use entitlements as part of a complete and correct application package is to avoid promoting or creating any conflict between the local jurisdiction's land use entitlement and the solid waste facilities permit process. Under existing regulations, a complete permit application requires inclusion of the land use and/or conditional use permit (CUP) applicable to the facility. EAs are required to review the permit application to determine if it is correct. Other than using the information provided in the land use or CUP to better understand the project described in the application, it is not clear in existing regulation what the EA should be doing relative to reviewing the land use or CUP. Delays in the processing of some permit applications have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlements. State law has not mandated that the EA be an agency required to verify if the information in the land use approval is correct or if the facility has the approval of the local government to operate as proposed under a solid waste facilities permit. The appropriate agency for making local land use determinations is the local government having jurisdiction, in most cases, the city or county in which the facility is located.

To provide clarity, the proposed regulations remove the requirement that applicants submit land use entitlements to the EA in their applications, thus excluding local land use from EA decisions on acceptance of a complete and correct permit application package. In its place, the new regulation provide that the EA may consider land use entitlements when drafting permit terms and conditions, which is when the EA considers the content of other entitlements, permits, and approvals when processing a solid waste facilities permit (see Section 21650(i)). The Note in Section 21650(i) is amended to clarify that when writing permit conditions the EA may take into consideration other permits, entitlements and approvals, such as local use permit conditions, mitigation measures imposed under the California Environmental Quality Act, Air Pollution Control District/Air Quality Management District permits to construct and operate, Department of Fish and Game permits, Coastal Commission approvals, and others. Further, the Board emphasizes that when writing permit conditions the EA shall take into consideration PRC Section 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and preventing environmental damage, and the long-term protection of the environment. This approach acknowledges that the EA should be aware of and may need to take into consideration other permits and approvals when writing permit terms and conditions, but does not put the EA in the position of enforcing local land use permit conditions by not processing a solid waste facilities permit application. Nothing in the proposed regulations will prevent or hinder a local jurisdiction from carrying out its responsibility relative to enforcing local land use requirements. Operators are still bound to comply with local land use permit conditions, which are enforced by local agencies that are charged with that responsibility.

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### **Response to Comments**

The following is a substitute response to comment 60-16 regarding Title 27, section 10303: Upon review of Section 10303, including Tables 1 and 2, there is no conflict between the proposed regulations and Section 10303.

### **Mandate On Local Agencies Or School Districts**

CIWMB staff has made a determination that the proposed regulations impose a mandate on local agencies that serve as CIWMB-certified local enforcement agencies. These agencies will incur minimal costs resulting from regulatory permitting requirements. The mandate does not require state reimbursement because these agencies are authorized by PRC Sections 43213 and 44006(c) to charge a fee to recover the costs of performing these services.